

Exhibit A

IWC

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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
INDUSTRIAL WELFARE COMMISSION

Public Hearing

October 3, 2000
Edmund G. "Pat" Brown Building
505 Van Ness Avenue
San Francisco, California

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PARTICIPANTS

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Industrial Welfare Commission

<http://www.dir.ca.gov/iwc/PUBHRG10032000.htm>

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I did a little cruise on the major range and sheepherder associations' Web sites in preparation for this hearing. Every single one of them has a sub-site that talks about the major problem that predators are for the industry. These men, these sheepherders, when they're awake, when they're resting, when they're eating, when they're sleeping, are guarding these sheep from the biggest danger to the industry, predators. And they are entitled, under consistent and longstanding application of state law, to be entitled for that if they're not exempted from the minimum wage.

I have some materials that I'd like to add to the record and give to the members that detail the legal summaries and talk about some of these specific holdings. And I'll just close my remarks with that.

COMMISSIONER DOMBROWSKI: Thank you.

Mr. Soares, I'm going to let you manage your panel.

(Applause)

MR. SOARES: Mr. Chairman and members, George Soares, on behalf of the Western Range Association. I appreciate the opportunity to have two panels appear before you today to speak to the issue. I also appreciate the fact that the board members obviously are interested in this issue. We think we have some people on the panels today who will provide you with some important information and also are prepared to respond to any and all questions you have. I'd like, at the end of the process, to offer some opinion as well.

So, with that, I will turn the mike over to Jim Holt.

MR. HOLT: Good afternoon. My name is James Holt. I am senior economist with McGinnis, Norris, and Williams in Washington, D.C. We're general counsel and also consultants, the lawyers and consultants that Mr. Schacht was referring to, to Western Range Association. I also do consulting work on the H-2A program for most of the other H-2A users around the country. I'm a former professor of farm management at Penn State University. I've been working with Western Range for about a dozen years now, and over that time have -- although I'm not a sheepherder nor a sheep rancher, I've gained a good deal of familiarity with the sheepherding occupation.

I have with me a report that I'd like to provide to you which addresses the issues that I think are on the minds of the commissioners on this issue. It describes the sheepherding occupation, points out that there are, at least in the last California EDD survey, 206 aliens and 29 domestics in California in this occupation, though that number varies a little bit from time to time.

It describes the Western Range Association structure for the use of

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the H-2A shepherd program, including the particular obligations that the Western Range Association has taken on itself as a part of running the shepherd program, such as their status as joint employers, where they are essentially guarantors of the contract terms that the individual members contract for. If a member, for example, goes bankrupt, the Western Range Association steps in and pays the herders' wages and that sort of thing.

It describes the H-2A program itself and specifically the federal standards for the shepherd program. I think it was Commissioner Rose and some of the others of you have been reading out the 20 CFR 655, Subpart B, regulations for the regular H-2A program. But the shepherd program has never -- the shepherd program actually predates the existing H-2 and H-2A visa categories. It was sort of put there in the immigration law as a -- someplace to put it. But it has always operated under its own separate set of -- its own separate regulatory framework that recognizes the -- some of the unique aspects of this occupation, which are relevant here.

And therefore, for example, although meals and -- at charge or cooking facilities are required in the regular H-2A program, food and lodging are provided free in addition to the cash wage for shepherders. And that's true not only in California, that's true throughout the shepherd program in the ten western states.

The report also describes the non-wage benefits in addition to the food and housing that you've heard about, a two-week paid vacation that the workers either take as vacation or as additional pay, the fact that transportation to, from, and between ranches is paid for by the Association, medical and life insurance that the Association voluntarily provides that's not required by the H-2A program, a three-year guaranteed employment contract, and a variety of other benefits that -- that the H-2A program itself mandates.

It also describes -- and I would commend this to your attention, and I'm not going to go through it, in the interests of time -- how this program is policed, not only by the Western Range Association, but by the California EDD, by the U.S. DOL, and by the sending country governments. You've heard a lot of outrageous claims of mistreatment and non-compliance and so forth. I think they are just that, they are outrageous claims. And this -- of course, when you get a couple hundred employers, you're always going to find somebody who goes off the reservation occasionally. There is no category of employees in this state or any state that is as highly regulated as H-2A workers are, and as studiously -- studiously studied in terms of compliance with the regulations.

And finally, with respect to the specific issues before this Commission, the report argues that the IWC should retain the current shepherd minimum wage exemption for, we believe, compelling

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